IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of	:	Sudhindra P. Herle
Serial No.	:	10/600,223
Filed	:	June 20, 2003
For	:	APPARATUS AND METHOD FOR PERFORMING AN OVER-THE-AIR SOFTWARE UPDATE IN A DUAL PROCESSOR MOBILE STATION
Art Unit	:	2191
Examiner	:	Satish Rampuria
Confirmation No.	:	9788

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

REPLY BRIEF

Sir:

Appellants herewith respectfully submit that the Examiner's decision of February 13, 2009, rejecting Claims 1-24 in the present application, should be reversed, in view of the following arguments and authorities. This Brief is submitted in response to the Examiner's Answer mailed June 5, 2009, and responds to the issues and arguments raised therein. No fee is believed due, but please charge any additional necessary fees to Deposit Account No. 50-0208.

ARGUMENTS IN RESPONSE TO THE EXAMINER'S ANSWER

All arguments and analysis of the Appeal Brief filed March 10, 2009 are re-urged and incorporated by reference herein. The remarks and arguments made below are in specific response to the Examiner's Answer dated June 05, 2009. The prior art references described below are U.S. Patent Publication No. 2004/0068721 to O'Neill et al. (hereinafter *"O'Neill"*) and U.S. Patent Publication No. 2007/0142083 to Cupps et al. (hereinafter *"Cupps"*).

Claim 1 recites a wireless communication device capable of accessing a wireless network and downloading a software upgrade file therefrom, the wireless communication device includes:

a first central processing unit (CPU) capable of controlling wireless communications with said wireless network;
a first memory associated with said first CPU;
a second central processing unit (CPU) capable of executing at least one end-user application on said wireless communication device; and
a second memory associated with said second CPU,
wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory.

Claim 13 recites a method of upgrading software in a wireless communication comprising: 1) a first CPU that controls wireless communications with the wireless network; 2) a first memory associated with the first CPU; 3) a second CPU that executes at least one end-user application; and 4) a second memory associated with the second CPU. The method includes

accessing a wireless network using the first CPU;
downloading the software upgrade file from the wireless network using the first CPU; and
transferring the downloaded software upgrade file from the first CPU into the second memory.

"Two CPUs" and "The First CPU ... Storing in A Memory Associated with the Second CPU"

In the Examiner's Answer, the Examiner essentially reproduces his argument made in the October 27, 2008 Office Action with respect to these elements. The Examiner tries to offer some clarification regarding the upgrading of firmware/software in *Cupps* that he believes are applicable in teaching that the first CPU downloads a software upgrade file from a wireless network and stores the downloaded software upgrade in a second memory associated with the second CPU as recited in Claims 1 and 13.

On Page 12 of the Examiner's Answer, the Examiner argues that "Cupps in combination with O'Neill teaches [sic] dual processor wireless device e.g., a second processing unit (CPU) (paragraph [0013] "The second processor processes the programs and data"); and a second memory associated with [sic] second CPU (paragraph [0119] '... system processor 302 and processor 320 being allocated their own separate portions of RAM 308')." The Examiner, however, offers no support for the contention that the combination of *O'Neill* and *Cupps* teaches that the first CPU stores the downloaded software/firmware in the second memory that is associated with the second CPU. The Applicant has clearly outlined on Pages 16-17 of the Appeal Brief that the combination of *O'Neill* and *Cupps* does not teach, or render obvious, that the <u>first CPU stores</u> the downloaded software/firmware <u>in the second memory that is associated with the second CPU</u>. Further, as also clearly outlined on Page 17 of the Appeal Brief, the Examiner continues to fail to address this necessary element in the rejections.

O'Neill contains no teaching or suggestion regarding a second CPU and a second memory associated to the second CPU. *Cupps* contains no teaching or suggestion that the first CPU

downloads and saves software to a second memory associated to the second CPU. Therefore, the combination of *O'Neill* and *Cupps* does not teach or suggest a "wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory" as recited by Claims 1 or "transferring the downloaded software upgrade file from the first CPU into the second memory" as recited by Claim 13. The Examiner's reliance on *Cupps* to teach or suggest these elements of Claims 1 and 13 is clear error.

"The First CPU Downloads Said Software Upgrade File"

In the Examiner's Answer, the Examiner argues that *Cupps* does not teach away from the ability to download software by the non-embedded processor for storage by the embedded processor, since no new software may be introduced to the embedded system. The Examiner tries to offer some support for this argument by citing the "open" operating environment of the PC module of *Cupps* that he believes is applicable in teaching that the first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory recited in Claims 1 and 13.

On Page 12 of the Examiner's Answer, the Examiner argues that "Cupps specifically teaches the ability to download software by the non-embedded processor for storage by the embedded processor." The Examiner, however, offers no support, reasoning, or motivation why the second processor, associated with the second memory, would download software in order for the first

processor to store the downloaded software in the second memory. This reasoning is unsupported by *Cupps*. *Cupps* expressly states:

> [0178] Conversely in an "open" software operating environment, such as in the case with the PC module (processor 320 and its related devices 321, 322, and 325), the user is free to add, modify and delete software applications and data files at will. Device 300 has also provided to the user an "open" operating environment, with an industry standard operating system, allowing for the use of industry standard software. The user of device 300 is free to load and manipulate software and data files that reside in **the "open" operating environment of the PC module** without fear of corrupting the core functionality of the entire device. The "open" environment provides a tremendous amount of PC use flexibility. However, unfortunately, since there is no guarantee of compatibility between the new software being introduced or modified in the "open" environment, or no guarantee of compatibility between the new software and the previously provided software, it increases the possibility of system failures. This is one reason why, in addition to greater power consumption, the PC module 320 is not used as the system processor/controller exclusively in device 300.[1] (Emphasis added).

Therefore, *Cupps* teaches that the second processor (e.g., the PC module) downloads software for storage, by the second processor, in the second memory. Accordingly, *Cupps* does not teach or suggest "wherein said first CPU downloads said software upgrade file from said wireless network and stores said downloaded software upgrade file in said second memory" as recited by Claim 1 or "transferring the downloaded software upgrade file from the first CPU into the second memory" as recited by Claim 13. The Examiner's reliance on *Cupps* to teach or suggest these elements of Claims 1 and 13 is clear error.

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1 *Cupps*, paragraph [0128].

Further, *Cupps* teaches that the ability to download software requires greater power consumption. Therefore, the Examiner's contention that one skilled in the art would be motivated to combine *Cupps* with *O'Neill* "to maintain or better utilize the power and memory of a small devices [sic] such as a cellular phone to allow performing [sic] the complex functions for user's [sic] need" contradicts the teachings of *Cupps*. Therefore, *Cupps* teaches away from any ability to download software by the non-embedded processor for storage by the embedded processor." The Examiner's reliance on *Cupps* to teach or suggest these elements of Claims 1 and 13 is clear error.

The O'Neill Priority Date

In the Examiner's Answer, the Examiner essentially reproduces his argument made in the October 27, 2008 Office Action with respect to these elements. The Examiner tries to offer a clarification how the U.S. Patent Publication Number 2003/0182414 (hereinafter "*O'Neill '414*") teaches supports the current rejections in place of *O'Neill* (i.e., U.S. Patent Publication Number 2004/0068721). The Examiner, however, does not provide support for all the rejections wherein *O'Neill* is provided.

On Page 12 of the Examiner's Answer, the Examiner argues that *O'Neill '414* (paragraphs [0004], [0007], [0040], [0055], [0077], [0107] and [0108]) describes cellular phones. Further, the Examiner argues that *O'Neill '414* (paragraphs [0117]-[0124]) describes "the software upgrading process." The Examiner, however, has not provided a *prima facia* case as to how *O'Neill '414* teaches a wireless communications device comprising a first central processing unit (CPU) capable of controlling wireless communications with said wireless network; a first memory associated with said first CPU; and wherein said first CPU downloads said software upgrade file from said wireless

network and stores said downloaded software upgrade file in said memory as recited by Claim 1.

The Applicant has clearly outlined on Pages 18-20 of the Appeal Brief that the Examiner has not met the burden for providing a *prima facia* case of obviousness. The Examiner has failed to provide an articulated reasoning with some rational underpinning to support the legal conclusion of obviousness, such as by citing with specificity where the respective teachings could be found in *O'Neill '414*. The Examiner's reliance on *O'Neill* to teach or suggest these elements of Claims 1 and 13 is clear error.

Claims 2-12 and 14-24

In the Examiner's Answer, the Examiner restates verbatim his arguments made in the October 27, 2008 Office Action with respect to these claims. Since the Examiner offers no new arguments for his position, the Applicant reiterates that the arguments discussed in the Appeal Brief still stand.

REQUESTED RELIEF

The Board is respectfully requested to reverse the outstanding rejections and return this application to the Examiner for allowance.

Respectfully submitted,

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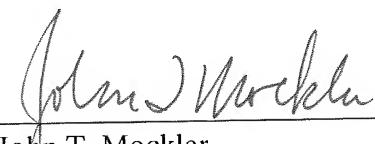
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